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4
5 UNITED STATES DISTRICT COURT
6 DISTRICT OF MASSACHUSETTS

7 C.A. NO. 04CV11557

8 * * * * *

9 JOSEPH BOOK,

10 Plaintiff

11 VS.

12 DEPARTMENT OF STATE POLICE,
13 COMMONWEALTH OF MASSACHUSETTS,
14 STATE TROOPER KURT M. FERRAZZANI,
15 STATE TROOPER SMITH, STATE
16 TROOPER McKENZIE, AND STATE
17 TROOPER HENNIGAN,

18 Defendants

19 * * * * *

20 Deposition of KURT M. FERRAZZANI, a witness
21 called by counsel for the Plaintiff, pursuant to the
22 applicable rules, before Lorreen Hollingsworth,
23 CSR/RPR, CSR NO. 114793, and Notary Public in and for
24 the Commonwealth of Massachusetts, at the Offices of
Hinckley, Allen & Snyder, 28 State Street, Boston,
Massachusetts, on Friday, September 15, 2006, at
10:35 a.m.

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1 interviewed Mr. Book on behalf of the
 2 police before you did?
 3 A No.
 4 Q No reason to believe that anyone else
 5 interviewed Mr. Book?
 6 A No. Before me?
 7 Q Correct.
 8 A No.
 9 Q So to put it another way, based on all the
 10 facts that you know of this incident, you
 11 were the first police officer to interview
 12 Mr. Book?
 13 A I don't know. When I arrived on scene, I
 14 didn't see anybody interviewing him before
 15 me.
 16 Q Let's take it step by step. You've
 17 described your interview.
 18 A Mm-hmm.
 19 Q You've told me that you don't know one way
 20 or the other whether someone interviewed
 21 him before you did. My question is
 22 different.
 23 You've said, one, you don't
 24 know of any facts to indicate that someone

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1 Q Can you read it back very slowly for --
 2 A You don't have to read it any slower.
 3 It's a ridiculous --
 4 Q What don't you understand about my
 5 question?
 6 A Do I have any reason to believe?
 7 Q Let me state it again.
 8 Do you have any facts to
 9 indicate that Mr. McKenzie interviewed
 10 Mr. Book before you did?
 11 A No. That's different than "any reason to
 12 believe."
 13 Q Let's move on.
 14 A Please.
 15 Q Do you know what the nature of the exchange
 16 between Mr. McKenzie and Mr. Book was?
 17 A No.
 18 Q Did you, as the supervising trooper, direct
 19 Mr. McKenzie to interview Mr. Book?
 20 A I don't recall.
 21 Q Was Trooper McKenzie reporting to you on
 22 this day?
 23 A No.
 24 Q Were you given assignments at the scene?

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1 did interview Mr. Book before you did,
 2 right?
 3 A Right.
 4 Q And to put that affirmatively, based on all
 5 the facts that you know, you were the first
 6 who did interview him from the police?
 7 A Yes.
 8 Q Thank you. Now, you said a moment ago that
 9 Trooper McKenzie had spoken with Mr. Book?
 10 A At some point Trooper McKenzie had
 11 spoken --
 12 Q After you did?
 13 A I don't know when.
 14 Q Do you have any reason to believe that
 15 Trooper McKenzie spoke to Mr. Book before
 16 you did?
 17 A I don't know when Al spoke to him. I don't
 18 recall. It was six years ago.
 19 Q Do you have any reason to believe that
 20 Trooper McKenzie spoke with Mr. Book before
 21 you did?
 22 MR. ROGAL: Do you understand
 23 the question?
 24 A No.

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1 A No.
 2 Q As the trooper responsible for this
 3 investigation, did you have any particular
 4 responsibilities that the other
 5 Massachusetts State Police trooper did not
 6 have?
 7 A Yes.
 8 Q What were those?
 9 A To fill out the reports.
 10 Q Did you tell Trooper McKenzie to do
 11 anything relative to Joe Book after you
 12 spoke to him?
 13 A After I spoke to who, Joe or Al?
 14 Q After you spoke with Joe Book --
 15 A Okay.
 16 Q -- did you give Trooper McKenzie any
 17 instructions with respect to Joe Book?
 18 A I might have asked Al to talk to him
 19 because I was getting nowhere with him.
 20 Q So you believe you instructed Trooper
 21 McKenzie to interview Mr. Book?
 22 A Yeah. You know, I might have asked him
 23 that. I can't say definitely, Al, go talk
 24 to him, or, Al, do me a favor, go talk to

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1 him.
 2 Q I'm just looking for your best memory.
 3 Is that your recollection,
 4 Trooper?
 5 A At some point Al spoke to Mr. Book.
 6 Q Did you direct him to speak to Mr. Book?
 7 A I don't recall.
 8 Q So when you just said, I might have asked
 9 him to talk to him, that's a pure guess?
 10 A Yes.
 11 Q So we can forget that.
 12 A Okay.
 13 Q Should we? Or do you think that's what you
 14 told Trooper McKenzie?
 15 A I don't recall.
 16 Q Okay. What did you do -- did you have any
 17 further interview with Mr. Book beyond what
 18 you've just described?
 19 A No.
 20 Q What did you do next?
 21 A I spoke to Trooper McKenzie and Trooper
 22 Smith.
 23 Q What did you talk to Trooper McKenzie
 24 about?

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1 guardrail, when you finished interviewing
 2 him, what did you do next?
 3 A I don't remember. There was an accident
 4 scene going on. I might have taken
 5 interviews; I might have gotten more
 6 interviews; I might have spoken to
 7 Troopers McKenzie and Smith.
 8 Q Tell me to the best of your recollection
 9 what you did next.
 10 A I believe I spoke to Trooper McKenzie, to
 11 talk to Mr. Book.
 12 Q So you think you told Mr. McKenzie --
 13 A I think I asked Al. I was getting nowhere
 14 with him.
 15 Q So you think you told Trooper McKenzie to
 16 interview Mr. Book. Is that your
 17 testimony?
 18 A I might have asked him -- I didn't tell him
 19 to interview. But I might have asked Al to
 20 speak to him.
 21 Q So now you do remember asking Al to speak
 22 to Mr. Book?
 23 MR. ROGAL: Objection.
 24 MR. CARTER: We're not playing

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1 A About the situation.
 2 Q What did you and he discuss?
 3 A I asked Al if -- you know, what he thought
 4 of interviewing Mr. Book, what he thought.
 5 Q What do you mean "what he thought"?
 6 A I asked him, Al, what's your opinion? And
 7 Al thought --
 8 Q Wait a minute, let me stop. I want things
 9 in minute periods of time.
 10 I want to pick up where you
 11 finish speaking with Mr. Book. We've spent
 12 several minutes now ascertaining that you
 13 were not aware of any facts that any other
 14 police officer spoke with Mr. Book prior to
 15 you?
 16 A Correct.
 17 Q Was Trooper McKenzie present with you when
 18 you were interviewing Mr. Book?
 19 A I don't remember.
 20 Q I want to know exactly what you did next
 21 when you finished speaking with Mr. Book.
 22 MR. ROGAL: When? The
 23 guardrail, in the car, when?
 24 Q After speaking with Mr. Book at the

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1 games here. I'm just trying to -- wait a
 2 minute.
 3 MR. ROGAL: I'm objecting to
 4 the form of your question, which I'm
 5 entitled to do.
 6 A I'm trying to answer. It's five years ago.
 7 Q Let me just be clear. I'm not asking to
 8 you to guess or speculate. I'm just
 9 asking -- and I'm sure your lawyer has told
 10 you this -- just to tell the best of your
 11 recollection and belief.
 12 A That's what I'm trying to do.
 13 Q And none of these questions are trick
 14 questions.
 15 I've asked several times if
 16 you know whether you asked Trooper McKenzie
 17 to speak to Mr. Book, and we've been back
 18 and forth.
 19 And now I understand that
 20 you're suggesting that you think you recall
 21 asking Al McKenzie to interview Mr. Book
 22 after you interviewed Mr. Book. Is that
 23 your testimony? I'll say it more
 24 succinctly.

33 (Pages 126 to 129)

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1	Is it your testimony that	1	the next. It's based on many factors.
2	after you spoke to Mr. Book, you asked Al	2	Q Tell me all the factors that you relied on
3	McKenzie to interview Mr. Book?	3	in charging Joe Book with the driving while
4	A Yes.	4	intoxicated.
5	Q All right. And were you with Mr. McKenzie,	5	A The three field sobriety tests that
6	Trooper McKenzie, when he interviewed	6	Mr. Book failed that Mr. McKenzie gave.
7	Mr. Book?	7	Q What were the three? What were they?
8	A No.	8	A I did not give them; Al gave them.
9	Q Did Trooper McKenzie interview Mr. Book?	9	Q What were they?
10	A I know he spoke with Mr. Book, yes.	10	A I believe they were the alphabet, the
11	Q Did he interview him?	11	one-legged stand, and the nine-step
12	A I don't know -- yes.	12	walk-and-turn.
13	Q What did they discuss?	13	Q Are you sure about that?
14	A I don't know.	14	A I'm not positive. Al gave the test.
15	Q Who made the decision to charge Joe Book?	15	Q Well, you're telling me that you relied on
16	A It was a collab- -- we all did.	16	the results of a field sobriety in making
17	Q Who was ultimately responsible for the	17	the final decision to charge Mr. Book with
18	charging decision?	18	a crime. Is that your testimony?
19	A I was.	19	A Not making the final decision; that was
20	Q Did you obtain information -- did you take	20	one. That was one factor that I relied
21	care to find out what information the other	21	upon.
22	troopers at the scene had obtained before	22	Q Correct. Your testimony is that you relied
23	you made the ultimate decision to charge	23	on the results of the field sobriety as one
24	Joe Book?	24	of the factors in making the decision to
	Page 131		Page 133
1	A Yes.	1	charge Mr. Book with a crime?
2	Q Did you take care to obtain the information	2	A That's correct.
3	obtained by Mr. McKenzie?	3	Q But you don't know what the test was?
4	A Did I take what?	4	A I didn't give the test; Trooper McKenzie
5	Q Did you take care, attempt -- did you	5	did.
6	attempt to obtain information --	6	Q Can you answer the question? You don't
7	A Yes.	7	know what the test was, is that right?
8	Q -- from Trooper McKenzie about what he	8	MR. ROGAL: Objection. He did
9	learned from his interview with Trooper	9	answer the question.
10	(sic) Book before you made the decision to	10	Well, I'll ask it again.
11	charge Mr. Book with a crime?	11	When you made the decision to
12	A Yes.	12	charge Mr. Book, did you know what the
13	Q What did Trooper McKenzie tell you?	13	field sobriety test was?
14	A I asked Al what he thought. Al told me he	14	A No, Trooper McKenzie gave them.
15	could smell an alcoholic beverage on him,	15	Q You didn't know?
16	also.	16	A I didn't give the test.
17	Q Do you remember him telling you that?	17	MR. ROGAL: He answered the
18	A Yes.	18	question. You're not entitled to a precise
19	Q Was that a factor in your charging	19	form --
20	decision?	20	MR. CARTER: I don't need a
21	A Amongst other things, yes, one factor.	21	lecture.
22	Q Was it as important as the other factor?	22	MR. ROGAL: Fine.
23	A Every factor I take into consideration.	23	Q Did you know, yes or no, what field
24	There's not one that's more important than	24	sobriety test was given at the time you